U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

FILE: LIN 02 281 52849 Office: NEBRASKA SERVICE CENTER Date: [illegible]

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER: SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner is engaged in the business of providing digital engineering services. It seeks to temporarily employ the beneficiary as a project engineer in the United States, and filed a petition to classify the beneficiary as a nonimmigrant intracompany transferee with specialized knowledge. The director determined that the petitioner had failed to establish that the petitioner and the organization which employed the beneficiary are qualifying organizations.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion, and forwarded the appeal to the AAO for review. On appeal, the petitioner submits a letter and additional evidence which seeks to clarify the petitioner's relationship with the foreign entity.

To establish L-1 eligibility, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). Specifically, within three years preceding the beneficiary's application for admission into the United States, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year. In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity.

The regulation at 8 C.F.R. § 214.2(l)(3) further states that an individual petition filed on Form I-129 shall be accompanied by:

> (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
>
> (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.
>
> (iii) Evidence that the alien has at least one continuous year of full time employment abroad with a qualifying organization within the three years preceding the filing of the petition.
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> (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

The primary issue in this matter is whether the petitioner and the foreign entity which employed the beneficiary are qualifying organizations.

The regulation at 8 C.F.R. § 214.2(l)(1)(ii)(G) defines the term "qualifying organization" as a United States or foreign firm, corporation, or other legal entity which:

> *(1)* Meets exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate or subsidiary specified in paragraph (l)(1)(ii) of this section;

(2) Is or will be doing business (engaging in international trade is not required) as an employer in the United States and in at least one other country directly or through a parent, branch, affiliate, or subsidiary for the duration of the alien's stay in the United States as an intracompany transferee; and

(3) Otherwise meets the requirements of section 101(a)(15)(L) of the Act.

Additionally, the regulation at 8 C.F.R. § 214.2(l)(1)(ii) provides:

(I) "Parent" means a firm, corporation, or other legal entity which has subsidiaries.

(J) "Branch" means an operating division or office of the same organization housed in a different location.

(K) Subsidiary means a firm, corporation, or other legal entity of which a parent owns, directly or indirectly, more than half of the entity and controls the entity; or owns, directly or indirectly, half of the entity and controls the entity; or owns, directly or indirectly, 50 percent of a 50-50 joint venture and has equal control and veto power over the entity; or owns, directly or indirectly, less than half of the entity, but in fact controls the entity.

(L) Affiliate means

(1) One of two subsidiaries both of which are owned and controlled by the same parent or individual, or

(2) One of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity, or

(3) In the case of a partnership that is organized in the United States to provide accounting services along with managerial and/or consulting services and that markets its accounting services under an internationally recognized name under an agreement with a worldwide coordinating organization that is owned and controlled by the member accounting firms, a partnership (or similar organization) that is organized outside the United States to provide accounting services shall be considered to be an affiliate of the United States partnership if it markets its accounting services under the same internationally recognized name under the agreement with the worldwide coordinating organization of which the United States partnership is also a member.

In this case, the foreign entity which employed the beneficiary is a Romanian company. The petitioner alleges that the Romanian company is a wholly-owned subsidiary of the U.S. entity. Specifically, the petitioner asserts that the U.S. entity owns an intermediary company based in the Bahamas, which in turn owns the Romanian company. Upon review of the evidence submitted, the director concluded that the Bahamian company was not owned by the U.S. company, and thereby found that the petitioner's claim of ownership of the Romanian company was not supported by the record. As a result, the director denied the petition on January 24, 2003.

Upon review of the record of proceeding, the petitioner has not established that it has the required qualifying relationship with the Romanian entity which employed the beneficiary.

With the initial petition, the petitioner provided the following documents:

(1) Letter from the petitioner describing the petitioner's relationship with the foreign entity and the beneficiary's duties;
(2) Resume and passport for the beneficiary;
(3) Credentials Evaluation Report for the beneficiary;
(4) Corporate documents of the Bahamian company evidencing the incorporation of the Romanian company;
(5) Memorandum of Association of the Bahamian company;
(6) Stock certificates and stock ledger for the Bahamian company; and
(7) Articles of Incorporation for the U.S. entity.

The director found this initial evidence to be insufficient to qualify the petitioner for the benefit sought, and consequently issued a request for evidence on October 25, 2002. In the request, the director specifically required the petitioner to submit evidence to definitively establish its qualifying relationship with the Romanian company through the Bahamian company, and required additional evidence in support of the petitioner's claim that the beneficiary possesses specialized knowledge. On November 4, 2002, the petitioner submitted a detailed response to the director's request which was supported by numerous corporate documents for the three companies, as well as additional documentary evidence in support of the beneficiary's alleged specialized knowledge.

Although the director concluded that the record demonstrated the Bahamian company's ownership of the Romanian company, he determined that the evidence did not support a finding that the U.S. entity was the parent of the Bahamian company. Specifically, the director based his decision on the fact that the two outstanding shares of stock in the Bahamian company were issued to Rawson Nominees Limited (Rawson) and Dalia Nominees Ltd. (Dalia), and not to the U.S. entity.[1] Although the petitioner asserted that these shareholders of record were in fact trustees for the U.S. entity, the director found that the petitioner had submitted no evidence of a relationship or agreement between the U.S. entity and the nominee shareholders. Consequently, the petition was denied on January 24, 2003.

The petitioner appealed the decision, asserting that the director misunderstood the relationship between the U.S. and Bahamian entities. In support of this contention, the petitioner provides a written statement accompanied by additional documentary evidence. The AAO will first examine the record of proceeding and the director's decision prior to examining the petitioner's claims on appeal.

The regulation and case law confirm that ownership and control are the factors that must be examined in determining whether a qualifying relationship exists between United States and foreign entities for purposes of this visa classification. *Matter of Church Scientology International*, 19 I&N Dec. 593 (BIA 1988); *see also Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (BIA 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982). In the context of this visa petition, ownership refers to the direct or indirect legal right of possession of the assets of an entity with full power and authority to control; control means the direct or

[1] The Memorandum of Association for the Bahamian entity authorizes the issuance of 5,000 shares of stock. As of the date of the petition's filing, only two shares had been issued.

indirect legal right and authority to direct the establishment, management, and operations of an entity. *Matter of Church Scientology*, 19 I&N Dec. at 595.

In this case, the petitioner alleges that it owns and controls the Romanian company through its sole ownership of the Bahamian company. Specifically, the petitioner states that at the time of the filing of the petition, it was the beneficial owner of the two outstanding shares of stock in the Bahamian company despite the fact that its name did not appear on the stock certificates or corporate ledger. The petitioner claims that the stocks were held in trust by the nominee shareholders, and in actuality, the U.S. entity was the true owner and controller of the Bahamian company. The AAO does not agree with the petitioner's allegation.

Prior to adjudication, the petitioner provided corporate documents evidencing the creation of the Bahamian company. Specifically, the petitioner submitted the Company Management Agreement, dated April 28, 1997, the Memorandum of Association, dated April 30, 1997, and copies of stock certificates issuing one share each to Rawson and Dalia. Also provided was the corporate stock ledger noting that the shares were held by these nominees in trust for the U.S. entity.

The Company Management Agreement appoints New World Trustees as the "manager" of the Bahamian company, and identifies the petitioner as its "principal" and "beneficial owner." The agreement outlines the manner in which the Bahamian company will be organized and managed, and renders the power to appoint shareholders and directors to New World Trustees. The Memorandum of Association, prepared and filed by New World Trustees in accordance with Bahamian law and regulations, authorizes the issuance of 5,000 shares of stock and appoints Rawson and Dalia to serve as directors. [2]

The director found that the evidence provided was insufficient to establish that the Bahamian entity was a wholly-owned subsidiary of the U.S. entity. Specifically, the director found that the stock certificates, which named the two nominee shareholders as the legal owners of the stock, were insufficient to establish the U.S. entity's ownership interests in the Bahamian entity, despite the notation on the stock ledger which asserted that the nominee shareholders held the shares in trust. In addition, the director found that the stock certificates and ledger, absent independent evidence establishing the terms of the relationship and/or agreement between the U.S. entity and the nominee shareholders, failed to substantiate the petitioner's claim that the U.S. entity exercised control over the Bahamian entity. Similarly, the director concluded that the vesting of authority in New World Trustees as manager of the Bahamian entity did not establish that the U.S. entity controlled the Bahamian entity.

The AAO concurs with the decision of the director. Specifically, the record prior to adjudication indicated that Rawson and Dalia were the shareholders of record and thus the legal owners of the stock in the Bahamian company. Although the petitioner alleges that the U.S. entity was in fact the "beneficial owner" of these shares and held a "beneficial interest" in them, this assertion is unpersuasive in establishing the petitioner's

[2] The Bahamian entity is an International Business Company (IBC), and is organized under the International Business Companies Act of 1989. The AAO notes that in order to establish an IBC in the Bahamas, the foreign entity is required to appoint a manager to prepare and file corporate documents and to manage the company as necessary.

ownership and control of the Bahamian entity and subsequent qualifying relationship with the Romanian entity.

The term "beneficial owner" is defined as "a right or expectancy in something as opposed to legal title to that thing." *Black's Law Dictionary* (8th ed. 2004). In addition, the term "beneficial interest" is defined as "a corporate shareholder who has the power to buy or sell the shares, but is not registered on the books as the owner." *Id.* Finally, the term "legal owner" is defined as "one recognized by law as the owner of something; esp., one who holds legal title to property for the benefit of another." *Id.* By virtue of these definitions, it is clear that the U.S. entity was not the legal owner of the shares at the time the petition was filed. Although the petitioner alleges that the shares were held in trust by the nominees on behalf of the U.S. entity, this argument is still unpersuasive. The record prior to adjudication contains no corroborating evidence of an agreement or relationship between Rawson, Dalia, and the U.S. entity. Although the petitioner claims that this relationship exists and was agreed upon, there is no distinct evidence to substantiate these claims. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

While not specifically addressed by the director in his decision, the petitioner also failed to establish the critical element of control. While the AAO acknowledges that the appointment of a manager to incorporate and manage a business is standard procedure when incorporating an IBC in the Bahamas, the petitioner failed to demonstrate that the U.S. entity would exercise control over the key decisions and functions of the Bahamian company. According to the Company Management Agreement, New World Trustees was authorized to: (1) provide the directors of the company; (2) provide the secretary and such other officers as may be required; (3) provide nominee shareholders; (4) provide the registered agent and registered office of the company; (5) keep and maintain the statutory books and books of account; and (6) perform any other duties as are required for the proper administration of the company. While it is undisputed that New World Trustees and the U.S. entity had an agreement with regard to the manager's functions and duties, there is no evidence that the U.S. entity was authorized to participate in the decisions of the company. The Memorandum of Association clearly designates that authority to the members and/or the directors of the entity, which is this case are Rawson and Dalia.

A petitioning company must disclose all agreements relating to the voting of shares, the distribution of profit, the management and direction of the subsidiary, and any other factor affecting actual control of the entity. *See Matter of Siemens*, 19 I&N Dec. at 365. Without full disclosure of all relevant documents, Citizenship and Immigration Services (CIS) is unable to determine the elements of ownership and control. Since the petitioner failed to provide any evidence of an agreement between the U.S. entity and the nominee shareholders despite the request of the director, it is impossible to determine that the U.S. entity exercised control over the Bahamian entity.

On appeal, counsel seeks to overcome the director's finding, and submits evidence of the agreement between the U.S. entity and the nominee shareholders. Specifically, the petitioner submits copies of the respective Declarations of Trust between both nominee shareholders and the U.S. entity, which outlines the benefits of the agreement and the scope of authority provided to the U.S. entity in controlling the actions of the trustees with regard to the exercise of voting rights. These documents were dated and signed on April 30, 1997.

Although documentation of this caliber was requested by the director in the request for evidence issued on October 25, 2002, the petitioner failed to provide these agreements, and offers no explanation on appeal as to why these documents were not previously submitted. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

In addition, the regulations affirmatively require a petitioner to establish eligibility for the benefit it is seeking at the time the petition is filed. *See* 8 C.F.R. § 103.2(b)(12). The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8). The petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The petitioner failed to submit the requested evidence and now submits it on appeal. However, the AAO will not consider this evidence for any purpose. *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988). The appeal will be adjudicated based on the record of proceeding before the director.

Also submitted on appeal is a new stock certificate issued to the U.S. entity by the Bahamian entity on February 14, 2003. This certificate, which is accompanied by the corporate stock ledger, indicates that the remaining 4,998 shares authorized by the Bahamian entity have been issued to the U.S. entity, thereby establishing the U.S. entity's ownership of the Bahamian company as the majority shareholder. This evidence is unacceptable. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978). In this case, the petition was filed on September 10, 2002, upon which date the U.S. entity held no legal title to any shares of stock in the Bahamian entity. The fact that the U.S. entity subsequently acquired a majority interest in the Bahamian entity is of no relevance to these proceedings, since such an interest was acquired more than one year after the filing of the petition.

Based on the evidence presented, it is concluded that the petitioner did not own and control the Bahamian entity, and thus did not have a qualifying relationship with the Romanian entity which had employed the beneficiary at the time of the filing of the petition. For this reason, the appeal will be dismissed.

Beyond the decision of the director, the minimal documentation contained in the record pertaining to the relationship between the Bahamian entity and the Romanian entity is insufficient to warrant a conclusion that the Romanian entity was owned by the Bahamian entity. While the director was satisfied with the evidence contained in the record, the AAO does not agree with the director's conclusion. The record contains no evidence that the Bahamian entity owns all or a majority of the outstanding shares of stock in the Romanian entity, and contains little, if any, independent evidence to corroborate the statements of the petitioner which attest to the existence of such a relationship. As the appeal will be dismissed, this issue need not be examined further.

Another issue in this proceeding is whether the beneficiary has been and will be employed in a specialized knowledge capacity pursuant to 8 C.F.R. § 214.2(l)(3)(ii). As required in the regulations, the petitioner must submit a detailed description of the services to be performed sufficient to establish specialized knowledge. *Id.* In the present matter, the petitioner has provided an ample description of the beneficiary's intended employment in

the U.S. entity, and his responsibilities as a project engineer. However, the petitioner has not sufficiently documented how the beneficiary's performance of the proposed job duties distinguishes his knowledge as specialized. There is no documentation, other than the petitioner's assertion, that a project engineer must possess advanced "specialized knowledge" as defined in the regulations and the Act. Additionally, there is no evidence that distinguishes the beneficiary from other similarly-qualified persons in the industry. As the appeal will be dismissed on other grounds, this issue also need not be examined further.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the director's decision will be affirmed and the petition will be denied.

ORDER: The appeal is dismissed.